In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 18546 of 2005
Date of Decision: 31.08.2006

Sunehra Singh

…Petitioner

Versus

State of Haryana and another

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR.
HON'BLE MR. JUSTICE M.M.S. BEDI.

PRESENT: Mr. R.K. Malik, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.
for the respondents.

JUDGMENT

M.M. KUMAR, J.

The order dated 9.12.2003, passed by the Registrar Cooperative Societies, Haryana, Chandigarh (respondent No. 2), dismissing the petitioner from service (P-6), is the subject matter of challenge in this petition filed under Article 226 of the Constitution. The aforementioned order was challenged in appeal under the

Haryana Civil Services (Punishment and Appeal) Rules, 1987 (for brevity, 'the Rules') and the Appellate Authority i.e. Financial Commissioner-cum-Principal Secretary to Government Haryana, Cooperation Department (respondent No. 1) has upheld the same vide its order dated 10.5.2005 (P-8), which has also been challenged by the petitioner.

Brief facts of the case are that the petitioner joined the Cooperation Department, Haryana as Sub Inspector on 26.10.1972 on ad hoc basis. On the basis of the recommendations made by the Haryana Subordinate Services Selection Board he was appointed as such on regular basis w.e.f. 1.6.1974. The petitioner was further promoted as Inspector, Cooperative Societies on 16.3.2001. A charge sheet was issued to the petitioner on 18.11.2002 (P-1) to which he submitted his reply (P-2). It is appropriate to mention here that following 7 charges were levelled against the petitioner:-

"1. Appointment of a boy of less than 15 years of age in contravention of the service rules.

2. Appointment of a person of 42 years of age in contravention of the service rules.

3. Whimsically dispensing with services of a very old official and appointing another person in his place.

4. Violation of election code of conduct.

5. Violation of Co-operative Act.

6. Demand for bribe.

7. Violation of the Government Employees Conduct Rules."

The Deputy Registrar, Co-operative Societies, Karnal, was appointed as an Enquiry Officer, who after conducting regular departmental inquiry against the petitioner sent the inquiry report directly to the Punishing Authority. As per the inquiry report, Charge Nos. 2, 4, 5 and 7 were proved whereas charge Nos. 1, 3 and 6 were not proved.

The Punishing Authority-respondent No. 2 accepted the findings of the Enquiry Officer qua Charge Nos. 1, 2, 4, 5, 6 and 7, however, with regard to charge No. 3 came to the conclusion that the finding of the Enquiry Officer is not based on facts and disagreed with the conclusions of the Enquiry Officer. While proposing the penalty of dismissal from service, a show cause notice dated 4.9.2003 (P-3) was issued to the petitioner suggesting as to why the proposed punishment be not inflicted upon him. In the instant case, the Punishing Authority has disagreed with the findings of the Enquiry Officer on Charge No. 3 and failed to supply a copy of the dissenting note to which a reference has been made in the show cause notice, before a final decision taken by concluding that the delinquent officer was guilty of Charge No. 3 as against the findings recorded by the

Enquiry Officer exonerating him from that charge. It is apposite to point out that even a copy of the inquiry report was not supplied to the petitioner prior to forming the opinion by the Punishing Authority while accepting the findings of the Enquiry Officer in respect of other charges. However, a copy of the inquiry report was supplied to the petitioner alongwith the aforementioned show cause notice (P-4). Thereafter the petitioner submitted reply to the show cause notice on 20.9.2003 (P-5). Respondent No. 2 proceeded to pass the order of punishment, dated 9.12.2003 (P-6), which has been upheld by the Appellate Authority on 10.5.2005 (P-8).

The aforementioned factual position is not disputed by the respondents in the written statement. The only stand taken is that the petitioner was served with the show cause notice proposing punishment of dismissal from service alongwith a copy of the inquiry report as per the procedure prescribed in the Rules. Some other details with regard to holding of inquiry and granting opportunity to the petitioner has also been given in the written statement.

The only question which requires consideration on the basis of the arguments addressed by the learned counsel for the parties is whether the report of the Enquiry Officer along with the dissent note on Charge No. 3 should have been furnished to the delinquent officer before the Disciplinary Authority arrived at its conclusion with regard to the guilt or innocence of the petitioner in respect of the charges levelled against him. It is admitted position

that the report of the Enquiry Officer was furnished to the petitioner along with the show cause notice dated 4.9.2003 (P-3). In the aforementioned show cause notice the Punishing Authority had recorded its conclusion and had accepted the findings recorded by the Enquiry Officer. A perusal of the show cause notice dated 4.9.2003 (P-3) makes the aforementioned position explicit and the same reads as under:-

> " The enquiry into the charges under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 against Shri Sunehara Singh, the then Inspector, Co-operative Societies, Nilokheri, now Sadhaura vide this office Memo No. 14/2/02/Admn.I(2)/16153 dated 18.11.2002 was got conducted from the Deputy Registrar, Co-operative Societies, Karnal. The enquiry report was received in this office from the Enquiry Officer vide his letter No. 2161 dated 8.7.2003, the photo copy whereof is enclosed herewith. The following charges were levelled against the official:-
>
> 1. Appointment of a boy of less than 15 years of age in contravention of the service rules.
>
> 2. Appointment of a person of 42 years of age in contravention of the service rules.

3. Whimsically dispensing with services of a very old official and appointing another person in his place.

4. Violation of election code of conduct.

5. Violation of Co-operative Act.

6. Demand for bribe.

7. Violation of the Government Employees Conduct Rules.

In the enquiry report received from the Enquiry Officer, the above charges No. 2, 4, 5, and 7 were stated to have been proved against the official and the charge No. 1, 3 and 6 were stated to have not proved. I have carefully perused the enquiry report and all other relevant record and have come to the conclusion that the conclusion arrived at by the Enquiry Officer regarding charges No. 1, 2, 4, 5, 6, and 7 are correct but the conclusion arrived at regarding charge No. 3 is not based on the facts, because the election programme for election of the members of the Managing Committee of the Barthal Co-operative Credit & Service Society Ltd., Barthal scheduled to be held on 13.7.2001 had been declared on 19.6.2001. This Inspector held meeting of the Board of Administrators under his chairmanship only one day prior to the date of election (13.7.2001) on

12.7.2001 and after passing the resolution removed an official from service and appointed another person in his place whereas the person appointed on compassionate grounds was not entitled thereto and even if any person had any claim, then the Managing Committee of the Society was competent to consider the same after completion of election process of the Society. Not only this, the Enquiry Officer has himself clearly admitted in conclusion of charge No. 4 that the Inspector should have not called the meeting on 12.7.01 to take important decisions.

Therefore, in view of the above facts, I disagree with the conclusions of the enquiry officer regarding charge No. 3 and agree with the conclusions regarding all other charges and I am provisionally of the opinion that a penalty of dismissal from service be imposed upon you. However, before I take further action as per proposed penalty, I deem it appropriate to give you an opportunity to submit your defence. If you desire to make any representation, the same be made in writing and be submitted direct to the undersigned within 21 days from receipt of this memorandum so that the same can be considered before taking final decision in the matter. It would also be appropriate to make clear that in case your representation is not received within the

stipulated period, it would be deemed that you have nothing to submit and the case will be decided on the basis of merits of the case.

Please acknowledge receipt.

Encl: Copy of the enquiry report.

Sd/-

Registrar, Co-operative

Societies, Haryana"

It is, thus, obvious that the inquiry report was not furnished to the petitioner before applying its mind by the Punishing Authority to the findings recorded by the Enquiry Officer. A Constitution Bench of the Hon'ble Supreme Court in the case of **Managing Director, ECIL v. B. Karunakar, (1993) 4 SCC 727**, has held that such a course is not open to the Disciplinary Authority and the law requires furnishing of an inquiry report to a delinquent employee in cases where the Enquiry Officer and Disciplinary Authority are two different entities so as to provide an opportunity of hearing to the delinquent employee. In para Nos. 29 and 30(iv) of the judgment, the following observations have been made, which are extracted below:-

"29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives

at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of breach of the principles of natural justice.

30. Hence the incidental questions raised above may be answered as follows:

XXX XXX XXX XXX XXX

XXX XXX XXX XXX

[iv] In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in *Mohd. Ramzan case* should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on

> the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly." (Emphasis added)

When the facts of the instant case are examined in the light of the principles laid by the Hon'ble Supreme Court no doubt is left that the disciplinary authority has failed to furnish a copy of the enquiry report along with dissent note on Charge No. 3 to the delinquent employee before concurring with the finding recorded by the Enquiry Officer. It is also obvious that Enquiry Officer and Disciplinary Authority are two different entities, therefore, the principles extracted above have to be followed. Thus, the petition deserves to succeed.

The matter is not res integra. Under the similar facts, we have already deliberated upon in detail in the case of **Ramesh Kumar v. State of Haryana and another** (C.W.P. No. 17710 of 2005, decided on 15.5.2006), wherein we have discussed as to why such an error has been committed by the Disciplinary Authority. We have pointed out that Rule 7(6) of the Rules continues to be static despite change in law by virtue of the judgment of Hon'ble the Supreme

Court in the case of **Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588** and a Constitution Bench judgment in the case of B. Karunakar (supra). We have reminded the respondent State that a number of cases keep on appearing before this Court and by necessary amendment in the Rules, unnecessary burden on public exchequer and wastage of precious time at all quarters, could be avoided by making necessary amendments, which would advance public interest.

In view of the above factual and legal position, the show cause notice dated 4.9.2003 (P-3), order of the Punishing Authority, dated 9.12.2003 (P-6) and order of the Appellate Authority, dated 10.5.2005 (P-8) are quashed. The Punishing Authority shall proceed with the inquiry on the assumption that the petitioner is deemed to have been supplied the copy of the inquiry report along with dissent note today in the Court i.e. 31.8.2006, as has been agreed between the parties and the respondents shall now proceed with the inquiry proceedings in accordance with law from that stage. The petitioner may file his reply within a period of four weeks from today by pointing out any defect in the findings recorded by the Enquiry Officer and dissent recorded by the Punishing Authority. The reply shall also be considered by the Punishing Authority in accordance with law and a speaking order is required to be passed.

The writ petition is allowed in the above terms.

The office is directed to send a copy of this order to the Chief Secretary to Government of Haryana, for taking necessary action as per the suggestion made.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)
JUDGE

August 31, 2006

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